Supreme Court, U.S.
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10-910

No. 10-

IN THE

Supreme Court of the United States

MICHAEL LEON SEATON,
Petitioner,

v.

STEPHEN MAYBERG, MELVIN E. HUNTER, DENNIS R. SHEPPARD, AND BARRIE GLEN,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUPPLEMENTAL APPENDIX

MICHAEL G. YODER
MOLLY J. MAGNUSON
O'MELVENY & MYERS LLP
610 Newport Center Drive
Newport Beach, CA 92660
(949) 760-9600

JONATHAN D. HACKER
(Counsel of Record)
jhacker@omm.com
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, DC 20006
(202) 383-5300

Attorneys for Petitioner

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL LEON SEATON,)
)
Petitioner,)
)
v.)
)
STEPHEN MAYBERG, et al.,)
)
Respondent.)
)

Case No. CV 05-0604-GHK (JTL)

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

The Court submits this Report and Recommendation to the Honorable George H. King, United States District Judge, pursuant to 28 U.S.C. Section 636 and General Order 01-13 of the United States District Court for the Central District of California.

PROCEEDINGS

On January 25, 2005, Michael Leon Seaton ("Petitioner") filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. Section 2254 ("Petition"). On August 1, 2005, Respondent filed a

Motion to Dismiss Petition for Writ of Habeas Corpus ("Motion to Dismiss") on the grounds that (1) Petitioner was not "in custody," and (2) the Petition is untimely. On November 22, 2005, Petitioner filed an Opposition to Respondent's Motion to Dismiss ("Opposition"). Respondent filed a Reply to the Opposition ("Reply") on December 20, 2005.

This matter is now ready for decision.

BACKGROUND

In February 1986, a jury convicted Petitioner of two counts of forcible rape (Cal. Penal Code § 261), two counts of forcible oral copulation (Cal. Penal Code § 288a), and one count of kidnaping (Cal. Penal Code § 207), with a finding that the kidnaping was committed for the purpose of committing rape (Cal. Penal Code § 667.8). (*See* Petition at 2; Motion to Dismiss, Exh. A). Petitioner admitted that he suffered two prior serious felony convictions (Cal. Penal Code § 667). (*See* Motion to Dismiss, Exhs. A; Exh. B at 1). On March 18, 1986, the trial court sentenced Petitioner to state prison for a term of forty-two (42) years. (*See* Motion to Dismiss, Exh. A).

Petitioner appealed his conviction to the California Court of Appeal. On July 2, 1987, the court of appeal remanded the matter to the superior court for resentencing, but affirmed Petitioner's conviction in all other respects. (Motion to Dismiss, Exh. B). Petitioner filed a petition for rehearing in the California Court of Appeal. On July 28, 1987, the court of appeal denied the petition. (Motion to Dismiss, Exhs. C, D). Petitioner filed a petition for review in the California Supreme Court, which was

denied on October 14, 1987. (Motion to Dismiss, Exhs. E, F).

Concurrently with his direct appeal, Petitioner filed a petition for writ of habeas corpus in the California Court of Appeal. On August 3, 1987, the court of appeal denied the petition. (Motion to Dismiss, Exhs. G, J).

On October 22, 1986, Petitioner filed a petition for writ of mandate and request for temporary stay order in the California Court of Appeal, regarding a proposed transfer to another state prison. On October 24, 1986, the court of appeal denied the petition on the grounds that Petitioner had failed to exhaust his administrative remedies and had failed to prove that his remedies at law were inadequate. (Motion to Dismiss, Exhs. K, L, M).

On November 7, 1986, Petitioner filed a second petition for writ of mandate in the California Court of Appeal, again regarding a proposed transfer to another state prison. On November 14, 1986, the court of appeal denied the petition citing *In re Horowitz*, 33 Cal. 3d 534, 546 (1949) and *In re Muszalski*, 52 Cal. App. 3d 500 (1975). (Motion to Dismiss, Exhs. N, O, P).

On August 10, 1987, Petitioner filed a petition for writ of habeas corpus in the California Supreme Court. The California Supreme Court denied the petition on August 31, 1988 without citation to any authority. (Motion to Dismiss, Exhs. Q, R).

On January 29, 1988, the Santa Barbara County Superior Court resentenced Petitioner to a term of thirty-seven (37) years in state prison. (Motion to Dismiss, Exh. S). Petitioner appealed the resentencing to the California Court of Appeal. On April 7, 1989, the court of appeal again remanded

the matter to the superior court. (Motion to Dismiss, Exh. T). On October 27, 1989, the superior court resentenced Petitioner to a term of thirty-one (31) years in state prison. (Motion to Dismiss, Exh. U).

On March 14, 2002, the Santa Barbara County District Attorney filed a petition to commit Petitioner as a sexually violent predator ("SVP") pursuant to California's Sexually Violent Predator Act ("SVPA") Cal. Welf. & Inst. Code § 6600 *et seq.* (Motion to Dismiss, Exh. V). The Santa Barbara County Superior Court held a probable cause hearing on February 20, 2003, and determined that there was probable cause to detain Petitioner as a sexually violent predator within the meaning of the SVPA. (Motion to Dismiss, Exh. W). Petitioner is currently being held at Atascadero State Hospital awaiting trial on his civil commitment.[1] (*See* Motion to Dismiss, Exh. X; Reply, Exhs. A, B).

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[1] The SVPA, which took effect on January 1, 1996, "provides a court process by which certain convicted violent sex offenders, whose current mental disorders make them likely to reoffend if free, may be committed, at the end of their prison terms, for successive two-year periods of state hospital confinement and treatment as long as the disorder-related danger persists." *People v. Superior Court (Ghilotti)*, 27 Cal. 4th 888, 893 (2002). The SVPA defines a SVP as a person who has been convicted of a sexually violent offense against two or more victims, and who has a diagnosed mental disorder that makes him a danger to the health and safety of others in that it is likely that he will engage in sexually violent criminal behavior. Cal. Welf. & Inst. Code § 6600(a)(1).

Under Cal. Welf. & Inst. Code § 6601, the California Department of Corrections screens prisoners who may be SVPs in accordance with a protocol developed by the Department of Mental Health ("DMH"). *People v. Torres*, 25 Cal. 4th 680, 682-83 (2001). If it determines that the prisoner is likely to be a SVP, it refers him to the DMH for an evaluation by two

On June 30, 2003, Petitioner filed a petition for writ of habeas corpus in the Santa Barbara County Superior Court. Following an evidentiary hearing, the superior court denied the petition on January 23, 2004. (Motion to Dismiss, Exhs. Y, Z). On June 29, 2004, Petitioner filed a petition for writ of habeas corpus in the California Court of Appeal. The court of appeal denied the petition on July 22, 2004. (Motion to Dismiss, Exhs. AA, BB). On August 3, 2004, Petitioner filed a petition for review in the California Supreme Court, seeking review of the court of appeal's denial of habeas relief. The California Supreme Court denied the petition on October 20, 2004. (Motion to Dismiss, Exhs. CC, DD).

Petitioner filed the instant Petition on January 25, 2005. In the Petition, he raises the following claims challenging his 1986 conviction: (1) the

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psychiatrists or psychologists. *Id.* If both evaluators find that the prisoner suffers from the requisite mental disorder, the DMH forwards a petition for commitment to the county of the prisoner's last conviction. If the district attorney for that county concurs with the recommendation, he files a petition for commitment in the superior court. Cal. Welf. & Inst. Code § 6601.

The superior court then conducts a probable cause hearing to determine whether the prisoner is likely to engage in sexually violent predatory criminal behavior. *Torres*, 25 Cal. 4th at 683; Cal. Welf. & Inst. Code § 6602(a). If the superior court finds probable cause, it sets the matter for trial. Cal. Welf. & Inst. Code § 6602(a). In the meantime the prisoner remains in custody. *Id.* The prisoner is entitled to a jury, the assistance of counsel, and the right to retain experts to perform further evaluations. *Torres*, 25 Cal. 4th at 683; Cal. Welf. & Inst. Code § 6603(a). If the state proves beyond a reasonable doubt that the prisoner is an SVP, he is committed to the DMH for a two-year term. *Id.*; Cal. Welf. & Inst. Code § 6604.

prosecution failed to disclose exculpatory evidence to the jury; (2) the conviction was based on false testimony; (3) the 2003 DNA test results, indicating that Petitioner was in fact guilty of the charged offenses, did not cure the lack of due process in the 1986 trial; and (4) defense counsel was ineffective. (Petition at 5-6).

DISCUSSION

I. PETITIONER'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS

The instant Petition was filed after April 24, 1996, the date of the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") and is reviewed under the provisions of that Act. *See Lindh v. Murphy*, 521 U.S. 320, 326-27 (1997); *Patterson v. Stewart*, 251 F.3d 1243, 1245 (9th Cir. 2001). The AEDPA amended 28 U.S.C. Section 2244 to impose a one-year statute of limitations on federal habeas petitions by persons in custody pursuant to state court judgments. *See Patterson*, 251 F.3d at 1245; *see also Tillema v. Long*, 253 F.3d 494, 498 (9th Cir. 2001).

The one-year limitation period does not begin to run before April 24, 1996, and a petitioner for whom the period would have begun to run before that date would have until at least April 24, 1997, in which to file a petition for writ of habeas corpus. *See Duncan v. Walker*, 533 U.S. 167, 170-71 (2001); *Patterson*, 251 F.3d at 1245-46. Otherwise, the one-year limitation period embodied in 28 U.S.C. Section 2244(d) controls, which states:

> (d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of --
>
> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
>
> (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
>
> (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d) (1). Under Section 2244(d) (1) (A), the process of direct review does not conclude until either the United States Supreme Court has denied review, or, if no petition for certiorari has been filed, the ninety-day period for filing has expired. *See Tillema*, 253 F.3d at 498; *Bowen v. Roe*, 188 F.3d 1157, 1158-59 (9th Cir. 1999).

The running of the AEDPA is "statutorily tolled" while a "properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending. 28 U.S.C. § 2244(d)(2). Here, "properly filed" refers to the requirements for filing, not the requirements for

obtaining relief. *See Tillema*, 253 F.3d at 499, applying *Artuz v. Bennett*, 531 U.S. 4 (2000). The limitation period "is tolled during the pendency of a state application challenging the pertinent judgment, even if the particular application does not include a claim later asserted in the federal habeas petition." *Tillema*, 251 F.3d at 502. Section 2244(d)(2) tolls the statute for all of the time during which a state prisoner is attempting, through proper use of state court procedures, to exhaust state court remedies with regard to a particular postconviction application. Thus, in California, the statute of limitations is tolled from the time the first state habeas petition is filed until the California Supreme Court rejects the petitioners final collateral challenge. *See Nino v. Galaza*, 183 F.3d 1003, 1006 (9th Cir. 1999), *cert. denied*, 529 U.S. 1104 (2000). The statute of limitations is not tolled between the time a final decision is issued on direct review and the time the first state collateral challenge is filed, because there is no case "pending" during that time. *See Nino*, 183 F.3d at 1006. Statutory tolling also does not apply during the pendency of a prior federal habeas petition. *See Duncan*, 533 U.S. at 181.

Here, Petitioner's conviction became final on December 26, 1989, when the time to file an appeal expired sixty days after his final resentencing. *See* former Cal. R. Ct. 31(a); *Caspari v. Bohlen*, 510 U.S. 383, 390 (1994) ("A state conviction and sentence become final for purposes of retroactivity analysis when the availability of direct appeal to the state courts has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely filed petition has been finally denied."). Because his conviction became final before April 24,

1996, the effective date of the AEDPA, Petitioner had one year from April 24, 1996 in which to file his federal habeas petition. *See Duncan*, 533 U.S. at 170-71; *Patterson*, 251 F.3d at 1245-46. Absent any statutory or equitable tolling, Petitioner had until April 24, 1997 to file a habeas petition in federal court. *See* 28 U.S.C. § 2244 (d).

A. Statutory Tolling

Here, Petitioner filed his first state petition for writ of habeas corpus in the superior court on August 25, 1986. (*See* Motion to Dismiss, Exh. G). His first round of state habeas petitions was completed on September 30, 1988, thirty days after the California Supreme Court denied his petition on August 31, 1988. (*See* Motion to Dismiss, Exh. R). Because Petitioner's first round of state petitions was completed before April 24, 1996, those petitions cannot toll the statute of limitations because the statute of limitations had not yet commenced running.

Petitioner waited until June 30, 2003 to file his next state habeas petition. (Motion to Dismiss, Exh. Y). This second round of state habeas petitions does not toll the statute of limitations for two reasons. First, the petitions were directed toward the SVPA proceedings against Petitioner. (*See* Motion to Dismiss, Exhs. Y, AA, CC). *See* 28 U.S.C. § 2244 (D)(2) ("The time during which a properly filed application for state post-conviction or other collateral review with respect to the pertinent judgment or claims is pending shall not be counted toward any period of limitation under this subsection.") Second, the petitions were filed after

the expiration of the statute of limitations period, which was April 24, 1997, and, thus, would not implicate the statutory tolling provision under Section 2244 (d) (2). *See, e.g.*, *Green v. White*, 223 F.3d 1001, 1003 (9th Cir. 2000) (where the one-year period of limitation expired on April 23, 1997, state habeas petition filed on June 2, 1997 did not toll the period of limitation "because the limitations period had already' run"); *Green v. Olivarez*, 2000 WL 432818, *1 n.2 (N.D. Cal. April 18, 2000) ("The tolling provision in Section 2244(d) (2) does not 'revive' the limitations period (i.e., restart the clock at zero); it can only serve to pause a clock that has not yet fully run. Once the limitations period is expired, collateral petitions can no longer serve to avoid a statute of limitations.").

B. Equitable Tolling

Likewise, Petitioner offers no facts that would entitle him to any equitable tolling of the statute of limitations. The Ninth Circuit will permit equitable tolling of the AEDPA's limitations period "only if extraordinary circumstances beyond a prisoner's control make it impossible to file a petition on time." *Calderon v. United States Dist. Ct. (Kelly)*, 163 F.3d 530, 541 (9th Cir.), *cert. denied*, 526 U.S. 1060 (1999) (petitioner's mental incompetence rendered him unable to assist counsel). When external forces, rather than a petitioner's lack of diligence, account for the failure to file a timely claim, equitable tolling of the statute of limitations may be appropriate. *Calderon*, 163 F.3d at 541; *see Miles v. Prunty*, 187 F.3d 1104, 1107 (9th Cir. 1999), *disapproved on other*

grounds, *Patterson v. Stewart*, 251 F.3d 1243 (9th Cir. 2001).

Thus, a Court may, in limited circumstances, equitably toll a state prisoner's statute of limitations to challenge a state conviction in federal court. *See Tillema v. Long*, 253 F.3d 494 (9th Cir.), *amended*, 2001 WL 872875 (9th Cir. Aug. 3, 2001) (limitations period tolled because district court erred in dismissing first habeas petition without affording the petitioner the opportunity to abandon his unexhausted claim); *see also Whalem/Hunt v. Early*, 233 F.3d 1146 (9th Cir. 2000) (prison law library's lack of AEDPA materials, coupled with prisoner's ignorance of the AEDPA, may enable prisoner to avoid limitations bar); *Miles*, 187 F.3d at 1107 (prison officials' delay in issuing filing fee check and in sending the petition to the court justified tolling).

Here, Petitioner has offered no facts to show that extraordinary circumstances prevented him from complying with the AEDPA's one-year statute of limitations. Accordingly, the Court finds that the Petition is untimely filed and must be dismissed.[2]

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[2] Because the Court finds that the Petition is untimely, the Court need not address Respondent's alternative argument that dismissal is required because Petitioner is no longer "in custody" under 28 U.S.C. Section 2554 for the purpose of challenging his 1986 conviction. (*See* Motion to Dismiss at 4-6). Nonetheless, the Court notes that this argument appears to be meritorious. Subject matter jurisdiction over habeas petitions exists only if, at the time the petition is filed, the petitioner is "in custody" under the conviction challenged in the petition. *Maleng v. Cook*, 490 U. S. 488, 490-91 (1989); *Carafas v. Lavallee*, 391 U.S. 234, 238 (1968); *see also* 28 U.S.C. § 2254(a). A petitioner is not "in custody" once the sentence imposed for the conviction has "fully expired." *Maleng*, 490 U.S. at 491. Here, Petitioner completed his sentence as of April 4, 2002. (*See* Motion to Dismiss, Exh. Y at 233, n.3; Exh. AA at 267;

II. TO THE EXTENT PETITIONER IS CHALLENGING THE SVPA PROCEEDINGS THE YOUNGER ABSTENTION DOCTRINE BARS CONSIDERATION OF HIS CLAIMS

To the extent Petitioner, in his Petition, is seeking to challenge the SVPA proceedings that led to his current detention, the *Younger* abstention doctrine bars consideration of his claims. As stated above, on March 14, 2002, the Santa Barbara County District Attorney filed a petition to commit Petitioner as a sexually violent predator based, in part; on his 1986 conviction. The Santa Barbara county Superior Court held a probable cause hearing on February 20, 2003, and determined that there was probable cause to detain Petitioner as a sexually violent predator within the meaning of the SVPA. (Motion to Dismiss, Exh. W). Petitioner is currently being held at Atascadero State Hospital pending a trial on his civil commitment.[3] (*See* Motion to Dismiss, Exh. X; Reply, Exhs. A, B).

Exh. CC at 325). Thus, it appears that Petitioner is no longer in custody pursuant to his 1986 conviction and may not challenge its validity via a Section 2254 petition.

[3] If Petitioner is challenging the SVPA proceedings, the Petition would not be barred by the statute of limitations. Additionally, Petitioner would satisfy the "in custody" requirement for federal habeas relief. *See Brock v. Weston*, 31 F.3d 877, 890 (9th Cir. 1994) (holding that habeas petitioner could, challenge earlier, expired conviction in the context of an attack on his involuntary commitment for treatment as a sexually violent predator).

A. Pre-trial Habeas Petitions Are Properly Brought Under 28 U.S.C. § 2241

Pre-trial habeas petitions are properly brought under 28 U.S.C. Section 2241, which applies to a person in custody regardless of whether final judgment has been rendered and regardless of the present status of the case pending against him. *See McNeely v. Blanas*, 336 F.3d 822, 824 n.1 (9th Cir. 2003). A state civil committee, like Petitioner, has available the general grant of habeas corpus authority found in 28 U.S.C. Section 2241 where he is in pre-commitment custody and accordingly, a writ pursuant to 28 U.S.C. Section 2254 is unavailable to him. *Braden v. Judicial Circuit Court*, 410 U.S. 484, 488, 503 (1973). 28 U.S.C. Section 2241 subd. (a) provides:

> Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

28 U.S.C. Section 2241 subd. (c) states, in pertinent part: "The writ of habeas corpus shall not extend to a prisoner unless . . . (3) He is in custody in violation of the Constitution or laws or treaties of the United States."

If the Petitioner meets one of the criteria listed in 28 U.S.C. Section 2241(c), he may obtain relief in this Court. Here, Petitioner contends that he is being held at Atascadero State Hospital in violation of the Constitution and laws of the United States. Thus, to the extent Petitioner is challenging the SVPA

proceedings against him, the Petition is properly brought before this Court pursuant to 28 U.S.C. Section 2241 subd. (c)(3).

B. Federal Intervention Is Not Warranted

The *Younger* abstention doctrine forbids federal courts from enjoining pending state criminal proceedings, absent extraordinary circumstances that create a threat of irreparable injury. *See Younger v. Harris*, 401 U.S. 37 53-54 (1971); *Kenneally v. Lungren*, 967 F.2d 329 331 (9th Cir. 1992), *cert. denied*, 506 U.S. 1054 (1993). "*Younger* generally directs a federal court to abstain from granting injunctive or declaratory relief that would interfere with pending state judicial proceedings. *Martinez v. Newport Beach City*, 125 F.3d 777, 781 (9th Cir. 1997). "When a case falls within the proscription of Younger, a district court must dismiss the federal action." *World Famous Drinking Emporium. Inc. v. Tempe*, 820 F.2d 1079, 1081 (9th Cir. 1987); *see also Kenneally*, 967 F.2d at 331.

Under the *Younger* abstention doctrine, barring exceptional circumstances, federal courts may not stay or enjoin pending state criminal court proceedings. *Carden v. Montana*, 626 F.2d 82, 83-84 (9th Cir. 1980). If *Younger* abstention applies, a court may not retain jurisdiction, but should dismiss the action. *Judice v. Vail*, 430 U.S. 327, 348 (1977). Courts have "long recognized that in some circumstances considerations of comity and concerns for the orderly administration of criminal justice require a federal court to forego the exercise of its habeas corpus power." *Francis v. Henderson*, 425 U.S. 536, 539 (1976). In the habeas context, *Younger*

abstention promotes both the interests of comity and judicial economy. A habeas petitioner may be acquitted at trial, or on appeal, thereby mooting the federal issue in the petition. *Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983).

Younger abstention is appropriate when: (1) the state proceedings are ongoing; (2) the proceedings implicate important state interests; and (3) the state proceedings provide an adequate opportunity to raise federal questions. *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 432 (1982); *Kenneally*, 967 F.2d at 331; *Dubinka v. Judges of the Superior Court*, 23 F.3d 218, 223 (9th Cir. 1994).

Under the first prong of the *Younger* test, the pendency of the state proceedings is determined at the time the federal petition is filed. *Mission Oaks Mobile Home Park v. City of Hollister*, 989 F.2d 359, 360-61 (9th Cir. 1993), overruled on other grounds by *Green v. City of Tucson*, 255 F.3d 1086 (9th Cir. 2001); *see also Beltran v. California*, 871 F.2d 777, 782 (9th Cir. 1988). State proceedings are ongoing if appellate remedies have not been exhausted. *Huffman v. Pursue Ltd.*, 420 U. S. 592, 608-09 (1975).

As to the second prong, state proceedings may implicate important state interests when they are necessary for the vindication of important state policies. *Middlesex County Ethics Committee*, 457 U.S. at 432; *see World Famous Drinking Emporium*, 820 F.2d at 1082-83 (civil proceeding implicate state's interest in enforcing municipal ordinances regulating public nuisances).

As to the third prong, the United States Supreme Court has noted that "[w]here vital state interests

are involved, a federal court should abstain 'unless state law clearly bars the interposition of the constitutional claims.'" *Middlesex County Ethics Committee*, 457 U.S. at 432 (citations omitted). To satisfy this requirement, it is sufficient that constitutional claims may be raised in state court judicial review of the administrative proceeding. *See Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 629 (1986).

In *Dannenberg v. Nakahara*, 1998 WL 661467 (N.D. Cal. 1998) the district court concluded that the petitioners, who were in custody in Alameda County Jail as detainees awaiting a hearing under California Welfare and Institutions Code §§ 6600, *et. seq.*, were essentially asking the court to "step into the middle of a state civil commitment proceeding and overturn a state court's order concerning the law library access for that proceeding." The court, relying upon *Younger*, declined to do so and stated that the state's civil commitment proceedings that were pending were judicial in nature and involved the important state interest of protecting the public from sexual predators. *Dannenberg*, 1998 WL 661467 at *2.

As in *Dannenberg*, *Younger* abstention is required in this case. First, Petitioner is still awaiting trial on his SVP status. The state trial courts have continuing jurisdiction of civil commitment proceedings filed under §§ 6600, *et. seq.* *See People v. Hedge*, 72 Cal. App. 4th 1466, 1477 (1999). Thus, because there is an ongoing judicial proceeding, the first element of the *Younger* doctrine has been met.

Second, there is an important state interest at stake in protecting the public from sexually violent

predators. *See, e.g.*, *Dannenberg*, 1998 WL 661647 at *2 ("The civil commitment proceedings involve the important state interest of protecting the public from sexual predators.).

Third, there does not appear to be any reason why Petitioner's constitutional claims cannot be adequately addressed by the state courts. *See, e.g.*, *Dannenberg*, 1998 WL 661647 at *2 ("[T]here is no indication that California's civil commitment proceedings for sexually violent predators do not permit the petitioners an adequate opportunity to raise the constitutional issues petitioners are pressing in this court."); *see also World Famous Drinking Emporium*, 820 F.2d at 1082 (A court may abstain under *Younger* only if there are ongoing state judicial proceedings at which the plaintiff could raise his constitutional claims). A federal court should assume that state procedures will afford an adequate opportunity for consideration of constitutional claims "in the absence of unambiguous authority the contrary." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987).

Accordingly, because all three of the *Younger* factors are satisfied in the present case, abstention is required unless an exception to *Younger* applies.

Younger exceptions are few and far between. Federal courts cannot interfere with pending state criminal proceedings, absent extraordinary circumstances that create a threat of irreparable injury. *Younger*, 401 U.S. at 53-54. Irreparable injury does not exist if the threat to the plaintiff's federally protected rights may be eliminated by his defense of the criminal case. *Id.* at 46. Moreover, even irreparable injury is insufficient to permit interference with the proceeding unless it is "both

great and immediate." "Only in the most unusual circumstances is a defendant entitled to have federal interposition by way of injunction or habeas corpus until after the jury comes in, judgment has been appealed from and the case concluded in the state courts. Apparent finality of one issue is not enough." *Drury v. Cox*, 457 F.2d 764, 764-65 (9th Cir. 1972).

The "extraordinary circumstances" exception to the general rule against pre-conviction federal intervention was discussed by the Supreme Court in *Perez v. Ledesma*, 401 U.S. 82 (1971), wherein the Court stated:

> Only in cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps in other extraordinary circumstances where irreparable injury can be shown is federal injunctive relief against pending state prosecutions appropriate.

Id. at 85.

Here, Petitioner has not demonstrated harassment by state officials, asserted a double jeopardy violation, or sought to compel a trial, all recognized exceptions to *Younger* abstention. *Younger*, 401 U.S. at 49. Rather, he asserts that he will suffer "irreparable harm" because he "is pitted against the might and wealth of the State of California" in the SVPA proceedings, while he is "forced to utilize a Public Defender, whose budget. . . is one half that given to the District Attorney's Office of Santa Barbara County." (Opposition at 12). These allegations, however, are vague and unsupported, and are insufficient to demonstrate "irreparable harm." Thus, federal intervention is not warranted.

Therefore, for the foregoing reasons, if Petitioner is asserting a challenge to his SVPA commitment proceedings, the Petition should be dismissed without prejudice to Petitioner's refiling after his SVP proceedings, including his appeal, are completed.[4]

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[4] Moreover, the Court notes that the *Younger* abstention doctrine applies regardless of whether Petitioner's claims have been exhausted in the Santa Barbara Superior Court, the California Court of Appeal, and the California Supreme Court (*see* Motion to Dismiss, Exhs. Z, BB, DD). *Coleman v. Mayberg*, 2005 WL 1876061, *4 (N.D. Cal. 2005) ("[A] conclusion that Petitioner has exhausted his state remedies would not end matters because the *Younger* abstention doctrine still bars consideration of the petition.").

RECOMMENDATION

The Court, therefore, recommends that the District Court issue an Order: (1) approving and adopting this Report and Recommendation; and (2) directing that Judgment be entered denying the Petition for Writ of Habeas Corpus and dismissing this action with prejudice as to any challenge to his 1986 convictions, but without prejudice to Petitioner challenging his SVPA commitment proceedings after his SVPA proceedings have been completed.

DATED: January 30, 2006

/s/ Jennifer T. Lum
JENNIFER T. LUM
UNITED STATES MAGISTRATE JUDGE